

ENTERED

October 19, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

GUSTAVO LOPEZ MIRELES

Petitioner

VS.

LORIE DAVIS, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL
INSTITUTIONS DIVISIONS

Respondent

§
§
§
§
§
§
§

CIVIL ACTION NO. 7:15-CV-255

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner's motion for leave to proceed in forma pauperis ("IFP") on appeal from the Court's dismissal of his claims pursuant to 28 U.S.C. 2254 (D.E. No. 34). On August 24, 2017, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's motion for leave to proceed IFP on appeal be denied because Petitioner's notice of appeal is untimely under Rule 4(a) of the Federal Rules of Appellate Procedure—no matter how the notice of appeal is construed under Rule 4(a), and Petitioner fails to meet the requirements for any other avenue provided under Rule 4(a). Also pending before the Court are Petitioner's objections to the Report and Recommendation.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has conducted a de novo review of the Report and Recommendation. Finding no clearly erroneous error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Defendant's motion for leave to proceed IFP on appeal (D.E. No. 34) is **DENIED**.

SO ORDERED this 18th day of October, 2017, at McAllen, Texas.

A handwritten signature in black ink, reading "Randy Crane", written over a horizontal line.

Randy Crane
United States District Judge